

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3541

IN THE MATTER OF:

Served August 16, 1990

Application of BLUE LINES, INC.,)	Case No. AP-90-33
and ALL ABOUT TOWN, INC.,)	
Concerning Proposed Lease of)	
Equipment)	

On July 31, 1990, counsel representing Blue Lines, Inc. (Blue Lines or Lessee), filed with the Commission a proposal to lease six buses from All About Town, Inc. (AAT or Lessor). The proposed effective date of the lease is August 1, 1990. This matter comes within the ambit of Commission Regulation No. 69 and the Compact, Title II, Article XII, Section 12(a)(2)(i).

Regulation No. 69 applies "to the lease of motor vehicles by any lessee-carrier subject to the jurisdiction of this Commission when the vehicles are to be used by said carrier for the transportation of passengers between points in the Metropolitan District."

Regulation No. 69-03(c) provides that where it appears to the Executive Director that a contract of lease may not be in complete conformance with the requirements of this regulation, the Executive Director shall forward such contract of lease together with his analysis thereof to the Commission for determination and shall serve notice of such action and analysis upon the lessee.

By memorandum dated August 3, 1990, the Executive Director advised the Commission that:

- (1) the proposed lease document appears to be in conformance with the requirements of Regulation No. 69;
- (2) there is no evidence that the vehicles have been identified as required by Regulation No. 69-06;
- (3) there is no evidence of adequate insurance for the operation of the leased vehicles by lessee as required by Regulation Nos. 62 and 69-07 */; and

*/ Also on August 3, 1990, counsel for Blue Lines filed a certificate of insurance curing the four insurance defects specified in the Executive Director's memorandum.

(4) disposition of the proposed lease appears to require an order of the Commission pursuant to the Compact, Title II, Article XII, Section 12.

On August 8, 1990, counsel for Blue Lines filed a response to the Executive Director's analysis asserting, as relevant here, that the Compact, Title II, Article XII, Section 12(a)(2)(i) does not apply to the proposed lease and that Case No. FC-90-01 has nothing to do with the proposed lease.

The Compact, Title II, Article XII, Section 12(a)(2)(i) provides that it shall be unlawful, without approval of the Commission, to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any carrier which operates in the Metropolitan District.

The Commission finds that Blue Lines and AAT both are carriers that operate in the Metropolitan District. AAT's current insurance certificate contains an equipment list showing eight vehicles. Six of these vehicles are proposed to be leased to Blue Lines. The Commission finds this to be a substantial part of the properties of AAT. Accordingly, the Commission finds that the Compact, Title II, Article XII, Section 12(a)(2)(i) applies to this proposed transaction and that Commission approval is required. The standard for such approval is that the proposed transaction be consistent with the public interest. The Commission's finding on such matters is to be rendered by order, after hearing held upon reasonable notice.

The Commission takes notice of the ongoing proceeding in Case No. FC-90-01, Formal Complaint of Gold Line, Inc., against All About Town, Inc., et al., and the Commission's directive in Order No. 3509, served June 4, 1990, that AAT, et al., cease and desist from transportation covered by the Compact, except to the extent such transportation is authorized by AAT's Certificate of Public Convenience and Necessity No. 131. Although the record does not address this matter, we will consider whether the transaction proposed herein may represent an attempt by Lessor to comply with Order No. 3509 by divesting itself of the opportunity to operate these vehicles in violation of the Compact. It is noted, too, that the proposed lease provides that it may be cancelled on as little as one-day's notice. It is further noted that the consideration to Lessor is somewhat unusual, in that it is "30% of gross revenues generated by said vehicles operating pursuant to [Blue Lines'] WMATC Certificate No. 10 subject to the jurisdiction of the WMATC." The Commission also intends to consider whether this provision has the effect of violating the following requirement of Regulation No. 69-10:

Under no circumstances may any operating authority issued by this Commission to any carrier be leased, rented to, or used by any other person.

This order will provide notice of this proceeding and an opportunity for hearing. Protests, if any, should contain or be accompanied by all evidence and argument upon which protestant would

rely. Requests for oral hearing, if any, shall specify the evidence proposed to be adduced at such hearing and why oral hearing is necessary to adduce such evidence. The parties to the proposed lease will be afforded an opportunity to address the issues raised in this order and to submit such other evidence and argument as may be deemed relevant to this proceeding.

Finally, we see no utility in having these vehicles sit idle when Blue Lines wants to use them to perform operations authorized by its Certificate No. 10. The Compact, Title II, Article XII, Section 12(d) addresses this situation by providing that, during the pendency of determination of a Section 12(a)(2)(i) application, the Commission may, in its discretion, and without hearings or other proceedings, grant temporary approval for a period not exceeding 180 days. By this order the Commission will grant such temporary approval of the proposed lease.

THEREFORE, IT IS ORDERED:

1. That any person desiring to protest this application shall file with the Commission a notarized original and four copies of a protest in conformance with Commission Rule No. 14, together with all evidence and legal argument in support of the protest.

2. That any person requesting an oral hearing on this application shall file with the Commission an original and four copies of such request specifying the evidence proposed to be adduced at such hearing and why oral hearing is necessary to adduce such evidence.

3. That the parties to the proposed lease may, individually or jointly, file with the Commission a notarized original and four copies of a response to this order addressing the issues raised herein, along with such other evidence and legal argument as may be deemed relevant to this proceeding.

4. That the pleadings described above shall be filed at the office of the Commission, 1828 L Street, N.W., Suite 703, Washington, DC 20036-5104, no later than Friday, August 31, 1990, and simultaneously be served on each of the following:

Edward J. Kiley, Esquire
1730 M Street, N.W., #501
Washington, DC 20036-4579

All About Town, Inc.
519 - 6th Street, N.W.
Washington, DC 20001

Jeremy Kahn, Esquire
1726 M Street, N.W., #702
Washington, DC 20036

Gold Line, Inc.
5500 Tuxedo Road
Tuxedo, MD 20781

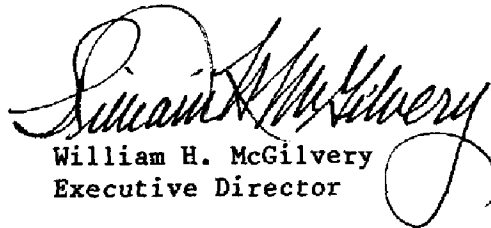
William F. King, Esquire
4660 Kenmore Avenue
Alexandria, VA 22304

5. Replies, if any, to the above-described pleadings shall be similarly filed and served no later than Friday, September 14, 1990.

6. That temporary approval of the subject lease is hereby granted for a period of 180 days from the date of this order, unless otherwise ordered by the Commission.

7. That the leased vehicles shall be identified in accordance with Regulation No. 69-06 before being operated by Blue Lines, Inc., and that an affidavit of such identification shall be filed with the Commission within seven calendar days of the date of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director